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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-1699**

In the Matter of the Welfare of the Child of:  
A. R. G. and D. A. S., Parents.

**Filed May 15, 2023  
Affirmed  
Slieter, Judge**

Chisago County District Court  
File No. 13-JV-22-158

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appellant-father D. A. S.)

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Considered and decided by Larkin, Presiding Judge; Reilly, Judge; and Slieter,  
Judge.

**NONPRECEDENTIAL OPINION**

**SLIETER**, Judge

Appellant-father challenges a district court order terminating his parental rights to his minor child and the district court's denial of his request to amend his transfer-of-custody petition. The record supports the district court's determinations that a statutory ground for termination exists, respondent-county made reasonable efforts to reunify the family, and termination of father's parental rights is in the child's best interests.

And we see no error in the district court's refusal to allow father to amend his transfer-of-custody petition. Therefore, we affirm.

## **FACTS**

This appeal arises from the termination of father's parental rights to K.S.V., born August 2019. Mother and father have never been married, and the Indian Child Welfare Act does not apply in this case.<sup>1</sup>

### ***First CHIPS Petition***

Respondent Chisago County Health and Human Services (the county) opened a child-protection assessment in September 2019 following a report that K.S.V. tested positive for methamphetamine at birth. Mother initially agreed to cooperate with the county to receive services and abstain from the use of controlled substances. Following mother's continued use of methamphetamine, the county filed a child in need of protection or service (CHIPS) petition in December 2019. The child was placed out of mother's home and the district court adjudicated K.S.V. in need of protection or services. The child was returned to mother's home in August 2020 and the first CHIPS matter was dismissed. K.S.V. had been in out-of-home placement for 206 days when he was returned to his mother.

### ***Second CHIPS Petition***

Father did not learn that he was the father of K.S.V. until the spring of 2020. At that time, father was serving a jail sentence for fifth-degree possession of a controlled

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<sup>1</sup> Mother voluntarily terminated her parental rights to the child at the start of trial and is not a party to this appeal.

substance. Father was released from custody in April 2021 and remained subject to probationary conditions. He was adjudicated K.S.V.'s father in May of 2021.

Father was then residing at his father's home and began visiting K.S.V. "as much as [he] could," including parenting the child "five days a week while his mom worked." By July 2021, mother and K.S.V. joined father (residing at the house of father's father). Father and mother jointly cared for K.S.V. the remainder of the summer. Father continued to use methamphetamine during this time.

Father participated in outpatient treatment in August 2021 but continued to use methamphetamine. Father's probation agent determined father needed a higher level of care and, in October 2021, father entered inpatient treatment. Father was successfully discharged to a sober living facility the following month. Father left the sober living facility in December 2021, and, by January 2022, father was again testing positive for methamphetamine.

In February 2022, K.S.V. was placed on a 72-hour hold and taken into custody because father failed to pick him up from a sleepover with his half-sisters. The county arranged an interview with father during which he submitted to a drug test, which showed a positive result for methamphetamine.

The county commenced the second CHIPS action, and the district court placed the child out of the parental home. Father was arrested in early March 2022 because he violated the probationary condition to abstain from controlled-substance use. The county case manager first met with father in April 2022, while he was in custody, to discuss his case plan.

In May 2022, following admissions by mother and father, the district court adjudicated K.S.V. in need of protection or services and approved case plans for both parents. Father's court-approved case plan required him to remain law abiding, maintain contact with his case manager, demonstrate sobriety, complete a mental-health assessment and follow the recommendations, and find suitable housing for himself and K.S.V.

Father completed the Chisago County jail treatment program while serving his sentence and, in July 2022, he was released to a sober living facility and continued outpatient treatment. Also in July 2022, the county petitioned the district court to involuntarily terminate father's parental rights to K.S.V. (the TPR petition). In response, father filed a petition seeking to transfer custody of K.S.V. to his maternal grandparents.

In September of 2022, father completed a parenting assessment, which determined that it was "not appropriate [for father] to independently parent his child[] at this time" because he had not yet had sufficient time to demonstrate sobriety. The assessment recommended that father demonstrate ten months of sobriety before being allowed to independently parent. Father was successfully discharged from treatment on October 27, 2022, and again resided with his father. He has passed all drug tests since being taken into custody in March 2022.

The district court held a two-day trial on the TPR petition beginning on October 31, 2022. At the start of trial, father moved to amend his transfer-of-custody petition to seek transfer of the child to his sister because his maternal grandparents were no longer willing to be legal custodians. The district court denied the amendment and dismissed father's transfer-of-custody petition.

During trial, the district court heard testimony from 12 witnesses and received 25 exhibits. The district court issued an order terminating father's parental rights. It concluded that the county proved by clear and convincing evidence four statutory grounds for termination, and that reasonable efforts had failed to rehabilitate father and reunite the family. The district court also concluded that terminating father's parental rights was in the child's best interests.

Father appeals.

### **DECISION**

A district court may terminate parental rights if (1) at least one statutory ground for termination is supported by clear and convincing evidence; (2) the county made reasonable efforts to reunite the family; and (3) termination is in the child's best interests. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008); Minn. Stat. § 260C.301, subd. 1(b) (2022) (setting forth statutory grounds for involuntary termination of parental rights). Appellate courts review an order terminating parental rights “to determine whether the district court’s findings address the statutory criteria and whether the district court’s findings are supported by substantial evidence and are not clearly erroneous.” *S.E.P.*, 744 N.W.2d at 385. Although “[p]arental rights are terminated only for grave and weighty reasons,” *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990), this court gives “considerable deference to the district court’s decision to terminate parental rights,” *S.E.P.*, 744 N.W.2d at 385. As a result, an appellate court must “fully and fairly consider the evidence, but so far only as is necessary to determine beyond question that [the evidence] tends to support the findings of the factfinder.” *In re Commitment of Kenney*, 963 N.W.2d

214, 223 (Minn. 2021) (quotation omitted). Thus, “[w]hen the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary.” *Id.* (quotation omitted). When the prerequisites for an involuntary termination are present, appellate courts review a district court’s decision to terminate parental rights for an abuse of discretion. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136-37 (Minn. 2014).

First, father argues that the district court abused its discretion by terminating his parental rights. Second, father argues that the district court abused its discretion by denying his request to amend his transfer-of-custody petition.

**I. The district court acted within its discretion to terminate father’s parental rights.**

Father challenges the district court’s determination that (1) the four statutory grounds for termination were met, (2) the county made reasonable efforts to reunify him with his child, and (3) termination is in the child’s best interests.

The district court concluded that four statutory bases exist to terminate father’s parental rights: (1) father neglected or failed to comply with his parental duties; (2) father is palpably unfit to be a parent; (3) reasonable efforts failed to correct the conditions leading to the child’s out-of-home placement; and (4) father has been adjudicated delinquent for an offense requiring registration under section 243.166, subdivision 1b, paragraph (a) or (b). *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (9). We consider the third statutory basis. *See S.E.P.*, 744 N.W.2d at 385.

### ***Statutory Basis***

The district court may terminate a parent's rights if "reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement" out of the home. Minn. Stat. § 260C.301, subd. 1(b)(5). We apply a clear-error standard of review to a district court's findings of historical fact and an abuse-of-discretion standard of review to a district court's ultimate determination of whether a statutory basis for involuntary termination exists. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012).

The district court found that despite father completing chemical-dependency treatment, following his case plan, and remaining sober, he "has not had adequate time to demonstrate that he can maintain sobriety and stability outside of the structured living environment of the jail or sober living facility." The district court observed that "[a]t the time of trial, Father had only been outside of a structured living environment for approximately four days." Based on these findings, the district court concluded there was clear and convincing evidence that reasonable efforts had failed to correct the conditions leading to the child's out-of-home placement.

The record reasonably supports the district court's findings. The child was not returned to father's home due to father's continued methamphetamine use. Though father made substantial progress on his case plan, his substance abuse has prevented him from providing a stable environment for the child. Father's substance abuse long precedes the second CHIPS petition—father admitted to using methamphetamine for many years, acknowledged that he had been incarcerated several times for possessing

methamphetamine, and he admitted that, historically, he has returned to using methamphetamine each time he has been released from custody. Father continued to use methamphetamine after becoming involved in K.S.V.'s life, including on his mother's birthday, when he was grieving her death, and immediately after K.S.V. was placed on a 72-hour hold. Father was discharged from treatment just four days before the TPR trial, which supports the district court's finding that his only periods of extended sobriety have been while father has been in custody on criminal offenses.

Father argues he has not had adequate time—due to the compressed timeline from filing of the CHIPS petition to the TPR trial—to demonstrate sobriety outside of a structured environment. Father testified that he expected to remain sober and expressed regret for his past mistakes, noting that this time is different because he finally understands “the consequences of [his use] and how [it] . . . affect[ed] [his] life with [K.S.V.]” The district court observed that K.S.V. had been in out-of-home placement for 462 days at the start of trial, and the court determined that father had not demonstrated sobriety outside of a structured environment. Together these findings indicate that the district court implicitly found not credible father's testimony that his recent sobriety will, in the future, allow him to parent. *See Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (noting that appellate courts defer to the district court's explicit and implicit credibility determinations). We defer to the district court's findings. *In re Welfare of Child of T.D.*, 731 N.W.2d 548, 555 (Minn. App. 2007) (citing *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996)), *rev. denied* (Minn. July 17, 2007).



Because the record supports the district court’s finding that the conditions that led to K.S.V.’s out-of-home placement have not been corrected and, as we explain below, this is despite the county’s reasonable efforts, the district court acted within its discretion to conclude that this statutory basis for termination has been proved. Only one statutory ground for termination need be proved. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). Therefore, we need not consider father’s arguments with respect to the other three statutory grounds.

### ***Reasonable Efforts***

In a proceeding to terminate parental rights, the district court must “make specific findings . . . that reasonable efforts to finalize the permanency plan to reunify the child and the parent were made including individualized and explicit findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family.” Minn. Stat. § 260C.301, subd. 8(1) (2022). In determining whether a county made reasonable efforts, the district court “shall consider” listed statutory factors. Minn. Stat. § 260.012(h) (2022). The reasonable efforts required of a county social service agency depend on the facts and circumstances of the case. *In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 663 (Minn. App. 2018). Determining whether efforts are reasonable “requires consideration of the length of time the county has been involved with the family as well as the quality of effort given.” *In re Welfare of M.G.*, 407 N.W.2d 118, 122 (Minn. App. 1987) (citation omitted). We apply a clear-error standard of review to the finding that the county made reasonable efforts to reunite a parent and a child. *See S.E.P.*, 744 N.W.2d at 387.

The district court found that the county made reasonable efforts to “rehabilitate the parents, reunify the [family], and finalize a permanency plan for the child” because “[t]he services offered were relevant to the safety and protection of the child, adequate to meet the needs of the child and family, culturally appropriate, available and accessible, consistent and timely, and realistic under the circumstances.” *See* Minn. Stat. § 260.012(h).

The services the district court found were:

- a. Communication with Mother, Father, and the foster placements;
- b. Referrals for chemical use assessments;
- c. Referrals to CORE Professional Services for psychological/parenting assessments;
- d. Communication with Father’s probation officer;
- e. Coordination of supervised visits between Father and [K.S.V.], and transportation of [K.S.V.] to visits;
- f. Help Me Grow and public health referrals for [K.S.V.];
- g. Coordination with [K.S.V.]’s siblings’ care providers to coordinate sibling visitation;
- h. Coordination of medical care for [K.S.V.], including vaccinations;
- i. Provided [K.S.V.] overnight care through a hospital stay;
- j. Enrolled [K.S.V.] in daycare with developmentally appropriate learning and social interactions;
- k. Communication with the Guardian ad Litem.

The record supports the district court’s findings, and the findings support the district court’s conclusions. K.S.V. was removed from the parental home due to father’s continued methamphetamine use. The record shows that K.S.V. was provided with foster placement, medical care, childcare, and visits with his half-sisters. These efforts support the district court’s finding that the county’s efforts were relevant to the protection and safety of K.S.V.

To address father’s chemical use, the county remained in contact with his jail treatment team as well as with his counselor from outpatient treatment to monitor his

progress. The county's efforts specific to father were reasonable under the circumstances. *See A.M.C.*, 920 N.W.2d at 663 (concluding that the county's efforts, including communication and offering services, "although imperfect, were reasonable under the circumstances" as "efforts that the county made or attempted were disrupted by father's repeated periods of incarceration"). The county also: maintained contact with father's probation agent; referred father for his parenting assessment; coordinated supervised visits between father and K.S.V.; and offered father gas cards for his parenting assessment, drug tests, and visits with K.S.V. The county's efforts were reasonable under the circumstances of father's incarceration for the majority of the time the TPR petition was pending. *Id.* Thus, the district court's finding that the county's efforts were adequate to meet the needs of K.S.V. and the family was not clearly erroneous.

Accordingly, the district court acted within its discretion by determining that the county made reasonable efforts to reunify father and K.S.V.

### ***Best Interests***

Even if a statutory basis for termination is present, the child's best interests are the "paramount consideration" in a termination proceeding. Minn. Stat. § 260C.301, subd. 7 (2022); *see also* Minn. Stat. § 260C.001, subd. 2(a) (2022). The district court balances three factors when considering the child's best interests: (1) the child's interest in preserving the parent-child relationship; (2) the parent's interest in preserving the parent-child relationship; and (3) any competing interests of the child. Minn. R. Juv. Prot. P. 58.04(c)(2)(ii); *see also J.R.B.*, 805 N.W.2d at 905 ("Competing interests [of the child] include such things as a stable environment, health considerations and the child's

preferences.” (quotation omitted)). We review the district court’s best-interests determination for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905. “[D]etermination of a child’s best interests is generally not susceptible to an appellate court’s global review of a record, and . . . an appellate court’s combing through the record to determine best interests is inappropriate because it involves credibility determinations.” *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009) (quotations omitted).

When finding that termination of father’s parental rights was in K.S.V.’s best interests, the district court observed that, at the time of trial, K.S.V. had been placed out of the home for 462 days—nearly one-half of his life. The district court then balanced the competing interests of father and K.S.V. and found that “the interest in preserving the parent-child relationship is outweighed here by [K.S.V.]’s interest in finally having a permanent, safe, stable home.” *See* Minn. R. Juv. Prot. P. 58.04(c)(2)(ii); *J.R.B.*, 805 N.W.2d at 905 (directing district courts to balance three factors when considering a child’s best interests). The district court’s findings are supported by the record.

In addition to considering the amount of time K.S.V. had spent outside of the home, the district court credited the testimony of the case manager. The case manager testified that terminating father’s parental rights is in K.S.V.’s best interests because K.S.V. “is in need of services and care that his parents have not demonstrated they are able to provide to him.” The case manager added that “[t]hey have been offered services and have not remedied the conditions that brought this child into child protection.”

Additionally, the district court identified K.S.V.’s unique medical needs when considering best interests. K.S.V. has an enlarged kidney due to pre-natal exposure to

methamphetamine, which requires annual checkups and attentive supervision. K.S.V. also has a seizure disorder which requires medication to regulate.

The district court determined that, though father has an interest in maintaining the parent-child relationship, his chemical-use history prevents him from forming “the kind of bond and attached where a child can expect that their parent will consistently meet their needs for food, shelter, medical care, and emotional support.” Father argues such a finding is unsupported by the record. We disagree. The family services aid testified that she believes K.S.V. formed an insecure bond with father because “his earlier years may have been a little more unstable.” Consistent with the aid’s testimony, the district court found that although father and K.S.V. “have a bond, it does not appear to be a parent-child bond.” Again, we defer to the district court’s credibility determinations, including implicit credibility determinations, *Pechovnik*, 765 N.W.2d at 99, and, thus, the district court acted within its discretion by finding that the bond father and K.S.V. share is not a parent-child bond. *J.R.B.*, 805 N.W.2d at 905.

Because the district court identified the best interests of father and K.S.V., weighed those interests, and determined that termination was in K.S.V.’s best interests, the district court acted within its discretion. Minn. R. Juv. Prot. P. 58.04(c)(2)(ii); *see also J.R.B.*, 805 N.W.2d at 905.

## **II. The district court acted within its discretion by denying father’s request to amend his transfer-of-custody petition.**

Minnesota law and the rules of juvenile protection procedure allow parties to petition to transfer custody of a child to a relative. *See* Minn. Stat. § 260C.515, subd. 4(6)

(2022) (stating that “another party to the permanency proceeding . . . may file a petition to transfer permanent legal and physical custody to a relative”); Minn. R. Juv. Prot. P. 54.03, subd. 1 (stating that a “party . . . shall file a permanent placement petition if the party disagrees with the permanent placement determination set forth in the petitions filed by the other parties”). These petitions “may be amended after the trial has commenced if the court finds that the amendment does not prejudice a party and all parties are given sufficient time to respond to the proposed amendment.” Minn. R. Juv. Prot. P. 54.04, subd. 2.

We conclude that the district court acted within its discretion by denying father’s request to amend the transfer-of-custody petition because father’s request came at the commencement of trial, which did not afford the county sufficient time to respond to his proposed amendment.<sup>2</sup>

**Affirmed.**

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<sup>2</sup> Our ruling does not preclude father’s sister from seeking relief on her own behalf during future proceedings.